

REMARKS/ARGUMENTS

I. *Status of the Claims*

Claims 1-33 are canceled. Claims 34-45 are added and pending with entry of this Amendment.

II. *Change of inventorship*

Inventors Jack Okomuro and Tatiana Tatarinova are deleted as inventors of the present application because their invention is no longer claimed. A Request to Correct Inventorship under 37 CFR 1.48(b) and an amended ADS accompany this Amendment.

III. *Objection to the title*

The Examiner objected to the title. Applicants amended the title in the previous Amendment (mailed June 26, 2003). Applicants are willing to consider additional changes to the title, but it is not clear what title the Examiner would consider appropriate. Applicants respectfully request that the Examiner propose a title.

IV. *Object to the abstract*

The Examiner objected to the abstract. In view of the amendment to the claims, Applicants submit that the abstract is accurate. However, Applicants are willing to consider additional changes to the title if they are suggested by the Examiner.

V. *New Matter Rejection*

The Examiner argued that the deletion of the sentence in the paragraph beginning on line 20 of page 43 amounted to an addition of new matter because it deleted guidance provided as filed. As explained in the remarks with the amendment, the deleted sentence included inaccurate information about the alignment of the consensus sequences. The correct information is in the application as filed on page 13, lines 3-6. Therefore, mere deletion of

Appl. No. 09/840,743
Amdt. dated March 18, 2004
Amendment under 37 CFR 1.116 Expedited Procedure
Examining Group

PATENT

incorrect information, when the correct information is also in the application, is not new matter.
Withdrawal of the rejection is respectfully requested.

VI. Rejections under 35 U.S.C. § 112

All of the claims rejected by the Examiner under 35 U.S.C. § 112 are canceled by this Amendment. Accordingly, the rejections are now moot and withdrawal of the rejections is respectfully requested.

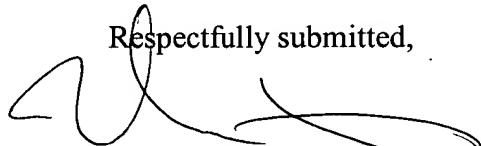
VII. Double patenting rejection

Now canceled claims were rejected under the judicially created doctrine of obviousness-type double patenting over claims 1-38 of U.S. Patent No. 6,476,296. Since all of the rejected claims are canceled, the rejection is moot. Applicants do not believe that the present claims are obvious over the claims of U.S. Patent No. 6,476,296.

CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance and an action to that end is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 415-576-0200.

Respectfully submitted,

Matthew E. Hinsch
Reg. No. 47,651

TOWNSEND and TOWNSEND and CREW LLP
Two Embarcadero Center, Eighth Floor
San Francisco, California 94111-3834
Tel: 415-576-0200
Fax: 415-576-0300
Attachments
MEH:meh
60161635 v1